

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HAWK VALLEY, INC.,)	
Individually and as a Representative)	
of a Class of Similarly Situated)	
Persons,)	
)	
Plaintiff)	Civil Action
)	No. 10-cv-00804
vs.)	
)	
ELAINE G. TAYLOR,)	
ENVIRONMENTAL PROCESS SYSTEMS, INC.,)	
and JOHN DOES 1-10,)	
)	
Defendants)	

O R D E R

Now this 30th day of March, 2012, upon consideration of
the following:

- (1) Defendants, Elaine G. Taylor and Environmental Process Systems, Inc.'s Motion to Dismiss Plaintiff's First Amended Complaint with Prejudice Pursuant to Fed.R.Civ.P. 12(b)(1) and 12(b)(6), which motion was filed April 14, 2011 (Document 37); together with,
 - (a) Defendants, Elaine G. Taylor and Environmental Process Systems, Inc.'s Memorandum of Law in Support of Their Motion to Dismiss Plaintiff's First Amended Complaint with Prejudice Pursuant to Fed.R.Civ.P. 12(b)(1) and 12(b)(6);
- (2) Plaintiff's Response in Opposition to Defendants' Motion to Dismiss Plaintiff's First Amended Complaint with Prejudice Pursuant to Fed.R.Civ.P. 12(b)(1) and 12(b)(6), which response was filed April 28, 2011 (Document 38);
- (3) Defendants' Reply Memorandum of Law in Support of Their Motion to Dismiss Plaintiff's First Amended Complaint with Prejudice Pursuant to Fed.R.Civ.P. 12(b)(1) and 12(b)(6), which reply memorandum was filed May 11, 2011 (Document 40);

- (4) Defendants' Notice of Supplemental Authority filed November 28, 2011 (Document 42);¹
- (5) Class Action Complaint filed by plaintiff February 24, 2010 (Document 1);
- (6) Order of the undersigned dated February 25, 2011, and accompanying Opinion, which Order and Opinion were filed February 28, 2011 (Documents 35 and 34, respectively); and
- (7) First Amended Class Action Complaint filed by plaintiff March 25, 2011 (Document 36);

and for the reasons expressed in the accompanying Opinion,

IT IS ORDERED that defendants' motion to dismiss is denied.

BY THE COURT:

/s/ James Knoll Gardner
James Knoll Gardner
United States District Judge

¹ Defendants attached, as Exhibit A to their notice, the November 22, 2011 Opinion of the United States Court of Appeals for the Seventh Circuit in Creative Montessori Learning Centers v. Ashford Gear LLC, 662 F.3d 913 (7th Cir. 2011) (Posner, C.J.). Defendants assert that Creative Montessori is factually similar to this matter and note that plaintiff's counsel was involved in the matter.

While Creative Montessori, *supra*, involved a class action in which private Telephone Consumer Protection Act ("TCPA") claims were asserted, the Opinion of the Seventh Circuit addressed an appeal from a district court order certifying the class rather than a challenge to subject matter jurisdiction or the limitations period applicable to private TCPA claims. For that reason, it does not bear on, and is not addressed in, the accompanying Opinion.